

Louis J. Merlino, a Sole Proprietor d/b/a L. M. Carpet Service and Resilient Floor Decorators Joint Funds and Apprenticeship Committees.
Case 7-CA-18034

August 28, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on July 21, 1980, by Resilient Floor Decorators Joint Funds and Apprenticeship Committees, herein called the Charging Party, and duly served on Louis J. Merlino, A Sole Proprietor d/b/a L. M. Carpet Service, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint and notice of hearing on September 10, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On March 20, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on April 3, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that, unless an answer to the complaint is filed by Respondent within 10 days from the service thereof, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, in a letter sent by certified mail, dated January 20, 1981, Respondent was advised by counsel for the General Counsel that the Board had not yet received an answer to the complaint and that counsel for the General Counsel would file a Motion for Summary Judgment if an answer was not filed by the close of business on February 3, 1981.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, an individual doing business under the trade name of L. M. Carpet Service, with his only office and place of business located in Dearborn, Michigan, where he is engaged in providing services as an installer of carpeting and other floor coverings. During the year ending December 31, 1979, a representative period, Respondent, in the course and conduct of his business operations, provided carpet and floor installation services valued in excess of \$50,000 to New York Carpet World, Inc., a carpet and flooring retail enterprise having several outlets in the Detroit metropolitan area. During the same period, New York Carpet World, Inc., derived gross revenues in excess of \$500,000 from its retail sales and purchased and caused to be delivered to its Michigan facilities carpeting and other goods valued in excess of \$50,000 directly from suppliers located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material

herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Detroit Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Unit*

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All carpet and floor covering installation employees employed by the Respondent at his Dearborn place of business, excluding guards and supervisors as defined in the Act, and all other employees.

B. *The 8(a)(5) and (1) Violation*

The Union has been the collective-bargaining representative of the employees in the above-described unit at all times material herein and has been recognized as such by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was, by its terms, for the period of May 1, 1978, through April 30, 1980.

Paragraph 9, article III, of the parties' most recent collective-bargaining agreement provides, *inter alia*, for the monthly payment by Respondent for each employee covered by said agreement of certain sums of money to various insurance, vacation, and pension funds administered by the Charging Party. Paragraph 11, article III, provides that Respondent, upon request, shall provide to the trustees of the Charging Party Funds all pertinent records regarding eligibility for and payment into the aforementioned Funds. Since on or about April 3, 1980, and continuing to date, Respondent, and his agent, Richard Lober, have failed and refused and continue to fail and refuse, despite requests by agents of the Charging Party, to provide his payroll records to auditors of the Charging Party.

Accordingly, we find that by the aforesaid conduct Respondent has, since on or about April 13, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit. By such action, we conclude that Respondent has

engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom. We shall also order Respondent to provide to the Charging Party or its designated agents all pertinent payroll records regarding employee eligibility for and Respondent's payment into various insurance, vacation, and pension funds, as required by article III of Respondent's collective-bargaining agreement with the Union, effective May 1, 1978, through April 30, 1980.¹

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Louis J. Merlino, A Sole Proprietor d/b/a L. M. Carpet Service, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Detroit Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All carpet and floor covering installation employees employed by Respondent at his Dearborn place of business, excluding guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the above-named labor organization has been and is now the exclu-

¹ The General Counsel has requested that Respondent be ordered to assume the expenses of reproducing the payroll records. However, we note that the complaint does not allege, and no evidence has been submitted showing, that the parties' collective-bargaining agreement specifically provided that Respondent assume such expenses or that under the parties' past practice Respondent previously has assumed them.

sive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 3, 1980, and at all times thereafter, to provide pertinent payroll records to auditors of the Charging Party as required by article III of the collective-bargaining agreement between Respondent and the Union, effective May 1, 1978, through April 30, 1980, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to provide pertinent payroll records to auditors of the Charging Party, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Louis J. Merlino, A Sole Proprietor d/b/a L. M. Carpet Service, Dearborn, Michigan, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Detroit Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by refusing to provide all pertinent payroll records regarding employee eligibility for and Respondent's payment into various insurance, vacation, and pension funds to auditors of the Charging Party, as required by the collective-bargaining agreement between Respondent and the Union, effective May 1, 1978, through April 30, 1980.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Provide to Resilient Floor Decorators Joint Funds and Apprenticeship Committees or its designated agents all pertinent payroll records regarding employee eligibility for and Respondent's payment

into various insurance, vacation, and pension funds, as required by article III of the collective-bargaining agreement between Respondent and the Union, effective May 1, 1978, through April 30, 1980.

(b) Post at his place of business at 6626 Schaefer Road, Dearborn, Michigan, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

I WILL NOT refuse to bargain collectively with Detroit Resilient Floor Decorators Local Union No. 2265, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by refusing to provide all pertinent payroll records regarding employee eligibility for and my payment into various insurance, vacation, and pension funds, to auditors of the Resilient Floor Decorators Joint Funds and Apprenticeship Committees, as required by article III of the collective-bargaining agreement that I have with the Union, effective May 1, 1978, through April 30, 1980.

I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of the rights guaranteed them by Section 7 of the Act.

I WILL provide to Resilient Floor Decorators Joint Funds and Apprenticeship Committees or their designated agents all pertinent payroll records regarding employee eligibility for and my payment into various insurance, vacation, and pension funds, as required by ar-

ticle III of the collective-bargaining agreement

that I have with the Union, effective May 1, 1978, through April 30, 1980.

LOUIS J. MERLINO, A SOLE PROPRI-
ETORSHIP D/B/A L. M. CARPET
SERVICE